

Message Text

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PAGE 01 STATE 163459

46

ORIGIN L-03

INFO OCT-01 IO-13 ADP-00 INT-08 AID-20 CEQ-02 CIAE-00

COA-02 COME-00 DODE-00 EB-11 EPA-04 INR-10 NSF-04

NSC-10 NSAE-00 PM-07 RSC-01 SCI-06 SS-15 SMI-01 CG-00

OMB-01 FMC-04 DOTE-00 OIC-04 AF-10 ARA-16 EA-11

EUR-25 NEA-10 AGR-20 JUSE-00 TRSE-00 PRS-01 PA-03

USIA-15 /238 R

DRAFTED BY L:L/EN:ELKERLEY:MAB

8/16/73 EXT 20495

APPROVED BY S/FW-COA:HLHEYMANN

SCI/EN - AMB. COERR (DRAFT)

L/T - MR. BEVANS

L/T - MR. MCQUADE

L/OA - MR. CAMITTA (DRAFT)

INTERIOR - MR. BOHLEN (DRAFT)

INTERIOR - MR. PARSONS (DRAFT)

CEQ - MR. HAYNE (INFO)

----- 114148

R 171422Z AUG 73

FM SECSTATE WASHDC

TO USMISSION GENEVA

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E.O. 11652: N/A

TAGS: SENV, OCON, CA, UR, NO, DA

SUBJECT: INTERIM AGREEMENT ON CONSERVATION OF POLAR BEARS

GENEVA PASS IUCN, MORGES

REF: NICHOLLS - COERR LETTER OF AUGUST 2, 1973

1. MISSION REQUESTED INFORM IUCN-NICHOLLS PROMPTLY THAT

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PAGE 02 STATE 163459

USG APPRECIATES OPPORTUNITY TO COMMENT ON DRAFT WORKING

DOCUMENT FOR OSLO MEETING.

2. SUBJECT TO SPECIFIC COMMENTS THAT FOLLOW USG CONSIDERS DRAFT WORKING DOCUMENT GOOD PAPER WHOSE BRACKETTED PORTIONS CLEARLY INDICATE MATTERS THAT WILL NEED TO BE RESOLVED AT OSLO MEETING. SIMILARLY, APPENDED EXPLANATORY NOTES CONSTITUTE GENERALLY ACCURATE STATEMENT OF POSITIONS OF NEGOTIATING STATES, AS WE UNDERSTAND THEM.

3. WITH RESPECT TO FIRST BRACKETTED PASSAGE IN ARTICLE I, PARA 1 "ON THE HIGH SEAS", WE PREFER THAT ONLY FIRST ALTERNATIVE SUGGESTED IN THE APPLICABLE FOOTNOTE "BEYOND TERRITORIAL WATERS" BE RETAINED. SECOND ALTERNATIVE IN FOOTNOTE "AT SEA BEYOND ITS TERRITORY" RAISES QUESTION HOW "ITS" TERRITORY IS DETERMINED. THIRD ALTERNATIVE IN FOOTNOTE "IN MARINE ENVIRONMENT NOT UNDER JURISDICTION OF ANY STATE" IS BASED ON ARTICLE I(E) OF ENDANGERED SPECIES

CONVENTION. LANGUAGE WAS ACCEPTABLE COMPROMISE IN THAT CONVENTION BECAUSE IT WAS AMBIGUOUS AS TO WHETHER THE JURISDICTION APPLIED TO THE SPECIMENS TAKEN OR TO THE PLACE WHERE THEY WERE TAKEN. THAT AMBIGUITY NOT PRESENT IN ARTICLE I, PARA 1 OF POLAR BEAR WORKING DOCUMENT. WE ACCORDINGLY BELIEVE THAT SECOND AND THIRD ALTERNATIVES TO "ON THE HIGH SEAS" UNLIKELY TO FACILITATE AGREEMENT AND THAT IT PREFERABLE THEY NOT BE PUT FORWARD. IN CONNECTION WITH THIS PROVISION IT MIGHT ALSO BE HELPFUL TO SUGGEST IN EXPLANATORY NOTES THE INCLUSION, AT APPROPRIATE PLACE, OF PROVISION THAT NOTHING IN POLAR BEAR AGREEMENT SHALL PREJUDICE CODIFICATION AND DEVELOPMENT OF LAW OF THE SEA OR CLAIMS OF ANY STATE. SUCH PROVISION COULD BE BASED ON ARTICLE XIV, PARA 6 OF ENDANGERED SPECIES CONVENTION.

4. SECOND BRACKETTED WORK IN ARTICLE I PARA 1 IS "DOMICILED", WHICH IS PLAINLY IMPROVEMENT OVER PREVIOUS "REGISTERED". WE THINK ALTERNATIVE "RESIDENT" IS EVEN BETTER, AS A TERM TO WHICH INTERNATIONAL LAW IS MOST CLEARLY APPLICABLE, AND WOULD PREFER IT TO "DOMICILED".

5. PROBLEM WITH ARTICLE I, PARA 2, ARISES FROM INCLUSION UNCLASSIFIED

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PAGE 03 STATE 163459

OF WORDS "ANY OF ITS PORTS OR HARBORS". WE HAVE DIFFICULTY UNDERSTANDING NORWEGIAN CONCERN THAT THIS PROVISION WOULD VIOLATE INTERNATIONAL LAW OR EXISTING TREATIES. AS MATTER OF PRESENT PRACTICE STATES CLOSE THEIR HARBORS TO SHIPS ON SUCH GROUNDS AS THEY CONSIDER SUFFICIENT. AS MATTER OF TREATY OBLIGATION, EXPLANATORY NOTES 15 AND 16 INDICATE THAT NORWAY HAS REFERRED TO 1923 BARCELONA STATUTE ON MARITIME PORTS. CONVENTION AND STATUTE ON THE

REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN, BARCELONA, APRIL 20, 1921 (7 LNTS 37) IS CONCERNED PRIMARILY WITH PROVIDING NON-DISCRIMINATORY TREATMENT IN INTERNATIONAL WATERWAYS AMONG THE SIGNATORY STATES. EXCLUSION OF SHIPS FOR CERTAIN ACTIVITIES, IF APPLICABLE TO SHIPS OF ALL THE CONTRACTING STATES, WOULD NOT APPEAR TO VIOLATE PROVISIONS (ARTICLE 6 OF STATUTE). CONVENTION ON INTERNATIONAL REGIME OF MARITIME PORTS, GENEVA, DECEMBER 9, 1923 (58 LNTS 287) APPENDS A STATUTE ON THAT SUBJECT. FOCUS OF THIS STATUTE, AGAIN, IS ON NON-DISCRIMINATORY TREATMENT AMONG SIGNATORY STATES. ARTICLE 17, WHICH RESERVES TO EACH CONTRACTING STATE RIGHT TO TAKE "GENERAL POLICE MEASURES" OR MEASURES IN PURSUANCE OF "GENERAL INTERNATIONAL CONVENTIONS" MIGHT ALSO BE APPLICABLE TO ARTICLE I, PARA 2 OF POLAR BEAR CONVENTION. TO ENSURE ACCURACY OF EXPLANATORY NOTES 15 AND 16, IUCN WILL NEED TO CONTACT NORWEGIANS FOR MORE

ACCURATE EXPLANATION OF REASONS FOR THEIR OPPOSITION TO "ANY OF ITS PORTS AND HARBORS" IN ARTICLE I, PARA 2. IF PREPARATION OF THAT EXPLANATION WERE TO CAUSE NORWEGIANS TO CONCLUDE THAT THEIR OPPOSITION TO PHRASE "ANY OF ITS PORTS AND HARBORS" IN VARIANT A COULD BE WITHDRAWN, WORKING DOCUMENT COULD THEN PRESENT SINGLE VERSION OF ARTICLE I (VARIANT A), AVOIDING MUCH DELAY AND CONFUSION AT OSLO MEETING.

6. IN THE EVENT THAT THE NORWEGIANS MAINTAIN THEIR OPPOSITION, AND ALL THREE VARIANTS OF ARTICLE I ARE TO BE PUT FORWARD IN THE WORKING DOCUMENT, WE THINK VARIANT B IS MATERIALLY INFERIOR TO VARIANTS A AND C. WE WOULD SUGGEST THAT THE WORDS "NATIONALS OF STATES NOT PARTY TO THIS AGREEMENT" IN VARIANT C BE CHANGED TO "NATIONALS OF

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PAGE 04 STATE 163459

ANY OTHER STATES". A STATE PARTY SHOULD NOT ALLOW A NON-NATIONAL TO USE ITS TERRITORY
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